



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUN 17 2003

Donald F. McGahn II, General Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 5197
National Republican Congressional
Committee and Christopher J.
Ward, as treasurer

Dear Mr. McGahn:

On April 23, 2001, the Federal Election Commission notified your clients, the National Republican Congressional Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 10, 2003, found that there is reason to believe the National Republican Congressional Committee and Christopher J. Ward, as treasurer, violated 2 U.S.C § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** National Republican Congressional MUR: 5197
5 Committee and Christopher J. Ward,
6 as treasurer
7

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 John Berthoud, President of the National Taxpayers Union ("Complainant"), *see* 2 U.S.C.
10 § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal
11 course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Complainant
12 alleged that the National Republican Congressional Committee and Christopher J. Ward, as
13 treasurer ("Respondents"), violated provisions of the Federal Election Campaign Act of 1971, as
14 amended ("the Act").

15 **I. LAW¹**

16 The Act prohibits "any corporation organized by authority of any law of Congress" from
17 making "a contribution or expenditure in connection with any election to any political office."
18 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person"
19 from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

20 For purposes of Section 441b, the terms "contribution" and "expenditure" include "any
21 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,
22 or anything of value . . . to any candidate, campaign committee, or political party or organization,
23 in connection with any election to any of the offices referred to in" Section 441b.

24 The Act excludes from the definition of contribution:

¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Factual and Legal Analysis exclude the changes made by BCRA.

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any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a State committee of a political party" and not to other committees, such as local party committees or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

II. COMPLAINT

On April 23, 2001, Respondents were notified of the complaint.² The complaint alleged that "two Congressionally-chartered corporations, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)" made contributions to the non-federal accounts of several national party committees in violation of 2 U.S.C. § 441b(a). After a discussion of the applicable law, the complaint stated, "Fannie Mae and Freddie Mac are strictly prohibited from making contributions to the nonfederal accounts of national party committees which are used to influence federal, state, or local elections."

² The National Republican Congressional Committee Contributions and Donna M. Anderson, as treasurer, were originally notified as respondents. The National Republican Congressional Committee responded on behalf of the National Republican Congressional Committee Contributions in this matter and appears as a respondent along with its treasurer. Additionally, Donna M. Anderson served as treasurer of this committee at the time the complaint was filed.

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1 The complaint included "a 1997-2000 summary report of soft money donations to
 2 nonfederal accounts" by Freddie Mac and Fannie Mae,³ which named the accounts involved in
 3 the alleged violations and gave the dates and amounts of the contributions in question.
 4 Complainant stated that "some of these contributions may have been made to permissible
 5 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's
 6 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's
 7 non-building soft money donations totaled slightly in excess of \$400,000." The complaint
 8 requested that the Commission "examine the building fund contributions (in excess of \$1 million
 9 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not
 10 diverted to prohibited nonfederal accounts."

11 **III. RESPONSE**

12 By letter dated May 14, 2001, Respondents, through counsel, submitted a response to
 13 Complainant's allegations. The response stated, "All donations from Freddie Mac and Fannie
 14 Mae are put into the NRCC building fund, and that fund is maintained in strict compliance with
 15 Federal law." The response stated that these donations were "not used in any way to influence
 16 federal, state or local elections" and that no money was "diverted from the building fund into
 17 other non-federal accounts, contrary to the complaint's baseless claim." The response included
 18 an affidavit from former treasurer Donna M. Anderson, which "confirms all Freddie Mac and

³ This summary report apparently was created by running a transaction query (data by individual) on the Commission's website. Complainant apparently used the names "Fannie Mae" and "Freddie Mac" as the last names in this individual search. The receipts generated were attached to the complaint. The complaint did not include receipts generated using "FannieMac" as the last name or "Mae, Fannie" and "Mac, Freddie" as the last and first names, which would have included more Fannie Mae and Freddie Mac donations. This caused the complaint to exclude \$496,250 in receipts reported from Fannie Mae and Freddie Mac from 1997-2000.

Furthermore, subsequent to the complaint, one of the National Republican Congressional Committee's non-federal accounts, NRCCC-Non Federal #1, reported a contribution of \$25,000 from Fannie Mae as received on 05/30/02. See discussion on page 4, *infra*.

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Fannie Mae donations went to the building fund.”⁴ The response stated that “each and every donation to the NRCC cited in the attachments to the complaint were building fund donations.”

IV. ANALYSIS

Fannie Mae and Freddie Mac are corporations organized by authority of laws of Congress, 12 U.S.C. § 1716 *et seq.* and 12 U.S.C. § 1451 *et seq.*, respectively, and therefore may not make any contribution in connection with any election to any political office. 2 U.S.C. § 441b(a). The response and affidavit of Respondents addressed all donations from Freddie Mac and Fannie Mae, not just the donations referenced in the complaint, and both state that all donations from these two sources were deposited into the National Republican Congressional Committee’s building fund.⁵ However, subsequent to its response, the National Republican Congressional Committee reported, in its 2002 July Quarterly Report, receipt by an account other than its building fund, the NRCCC-Non Federal Building Fund, of a \$25,000 contribution from Fannie Mae dated 05/30/02. There is no information in hand indicating that this \$25,000 contribution has been either redesignated to a building fund account or refunded to Fannie Mae.

Therefore, there is reason to believe that the National Republican Congressional Committee and Christopher J. Ward, as treasurer, violated 2 U.S.C. § 441b(a).

⁴ The affidavit of former treasurer Donna M. Anderson stated, “I have personally confirmed that each and every donation to the NRCC cited in the complaint in this MUR was placed in the NRCC building fund,” and, “All donations from these two entities [Fannie Mae and Freddie Mac] were made to the NRCC Building Fund.”

⁵ The National Republican Congressional Committee apparently maintained one non-federal account for contributions until 2001. This account was known as the “NRCCC-Non Fed Act,” as referenced in the complaint. This account reported all non-federal funds, not just donations to the building fund, including donations from Freddie Mac and Fannie Mae. There was no separate account devoted solely to donations for the building fund on record with the Commission. In 2001, the National Republican Congressional Committee replaced this one-account system and established three non-federal contribution accounts: the NRCCC-Non Federal #1, the NRCCC-Non Federal #2, and the NRCCC-Non Federal Building Fund. The National Republican Congressional Committee’s 2001 Mid-Year Report reflected this change. After that time, the National Republican Congressional Committee reported donations to the building fund in the NRCCC-Non Federal Building Fund.

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